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STATE FOR EB/TPP/BTA AND EB/IFD/OIA
STATE FOR NEA/ARP
STATE PASS USTR FOR DOUG BELL, SHAUN DONNELLY
COMMERCE FOR A/S BOHIGIAN
TREASURY FOR DAS SAEED

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SUBJECT: A/S BOHIGIAN HEARS ABOUT FTA, EXPORT CONTROLS AND INVESTMENT

CLASSIFIED BY AMBASSADOR MICHELE J. SISON FOR REASONS 1.4 (B & D).

¶1. (C) Summary: On November 13, A/S Bohigian urged Minister of Economy Sheikha Lubna Al-Qasimi and ADIA officials to re-energize FTA negotiations. Sheikha Lubna said that she and MinState Finance Dr. Khirbash would be contacting AUSTR Donnelly about having him come to the UAE to try and move discussions along. Bohigian assured his interlocutors that -- despite DP World -- the U.S. welcomed foreign investment and wanted the UAE to know that its investment was welcome. In response, the UAE noted that concern about security of assets and tax issues were two disincentives. ADIA noted that it looked at the U.S. as an important part of its strategic asset allocation. Bohigian pressed MinEcon Sheikha Lubna to pass an export control law. In response, Lubna suggested that we engage in outreach to the various emirate-level chambers of commerce to explain U.S. export control regulations, which we will do. Bohigian also highlighted our concerns about continued implementation of secondary and tertiary aspects of the Arab League Boycott. Post has already requested back up data from Commerce/BIS and will follow-up with the Ministry of Economy when it arrives. End Summary.

¶2. (SBU) On November 13, Assistant Secretary of Commerce for Market Access and Compliance David Bohigian met with UAE government officials, the Abu Dhabi Chamber of Commerce, and with U.S. business officials. At the Ministry of Economy, he met with UAE Minister of Economy Sheikha Lubna Al-Qasimi, MinEcon U/S Abdullah Al-Saleh, and UAE Commercial Attach in Washington Reem Al-Hashemi. At ADIA, he met with ADIA Executive Director Salem Al-Mazroui, Senior Legal Advisor William Brown, and Senior Tax Advisor Robert Peake.

Need to Reenergize FTA Negotiations

¶3. (SBU) A/S Bohigian urged the UAE to reenergize negotiations. He noted that recent Congressional elections and the June expiration of the Administration's Trade Promotion Authority (TPA) made the climate for concluding trade agreements more uncertain. He stressed that the expiration of TPA imposed a hard deadline. Ambassador asked Sheikha Lubna whether the UAE had evolved its position on the investment chapter since the September meetings between Assistant U.S. Trade Representative Donnelly and Sheikha Lubna and UAE Foreign Minister Sheikh Abdullah bin Zayed in New York. Sheikha Lubna explained that, due to Ramadan and travel schedules, she had only managed to discuss the issue with AbZ the day before her meeting with A/S Bohigian. She said that she would be discussing the matter with MinState Finance Dr. Mohammed Khalfan bin Kharbash in order to contact AUSTR Donnelly in the near future to invite him to visit the UAE (hopefully before the end of the year) in order to try to resolve the high level issues. She said that she wanted to make sure that the UAE had its "talking points" to be sure that the meetings were

useful. She was hopeful that these meetings could help reenergize the talks.

The UAE's Concerns

14. (SBU) Both Sheikha Lubna and ADIA representatives elaborated on some of the UAE's concerns with regard to the FTA negotiations. Lubna stressed the federal nature of the UAE, whereby the UAEG could not commit to some issues (such as natural resources) without the express consent of the individual emirates. Sheikha Lubna also complained that the U.S. visa, border entry, and airport process discouraged UAE businesspeople and investors from visiting the U.S. Movement of people, she argued, was key to improving trade relations. As an aside, she noted that when she had visited the U.S. as part of an official delegation, she had been the only one pulled aside for additional questioning. ADIA's Brown made a similar point in a subsequent meeting noting that ADIA once had a large scholarship program in the U.S. but that this had dropped off sharply, due to concerns about treatment in the U.S. or difficulties with visas.

15. (SBU) On the key issue of investment in the oil and gas sector, all of A/S Bohigian's government interlocutors stressed that U.S. companies already enjoy a preferred position, due to their reputation for excellence. Lubna noted that UAE restrictions on investment had not prevented U.S. firms from establishing themselves in the market. Brown noted that USTR's insistence on codifying Most Favored Nation status would actually do away with this preferred status as future FTA partners took advantage of the MFN clause.

16. (C) ADIA officials emphasized the UAE's concerns about entering into an agreement providing for third party investor-state arbitration, explaining the UAE's essential dispute shyness. As an example, Peake cited the UAE's decision not to fight the Congressional opposition to DP World's acquisition of U.S. port operations, but rather to quietly back down and divest itself of the assets. Brown emphasized that in the UAE's view, "partners don't sue partners." (Note: In a conversation with Parson's regional Vice President Roy Hill, Hill made essentially the same point. He explained that Parsons had never taken any of its partners in the UAE to arbitration, despite the ability to do so, with the view that taking a case to arbitration would destroy their ability to operate in the UAE in the future. End Note).

17. (C) Brown explained that the UAE was willing to accept third party arbitration, but wanted to impose mandatory confidential mediation (on the Michigan model) first. He explained that there were still differences on extending mandatory mediation to all sectors and on the amount of time to allocate to mediation, but that progress had been made. Brown added that the U.S. would face similar concerns about 3rd party arbitration in future negotiations with Saudi Arabia and Kuwait.

18. (SBU) Peake commented that the negotiations had made progress, but expressed irritation at the fact that the UAE kept facing "precedents not of its making" or being compared to "countries that are irrelevant" to its circumstances. He added that, every time the UAE thought it had made progress in proposing ideas that met its essential interests, it faced "bogymen" of the "interagency" or "U.S. business" or "Congress" without having a better idea of where the specific concerns were. He urged greater transparency to the UAE on the interagency process so that the UAE could see if interagency objections arose from misunderstandings. Brown added that he believed that "U.S. business" objections did not reflect the actual views of senior businesspeople. He explained that ADIA dealt with the largest oil and financial institutions in the world at the CEO/General Counsel level. The feedback that ADIA received at that level appeared to differ from the feedback that USTR was receiving at the Washington representative level about the relationship.

Progress has been Made

19. (C) Despite these concerns, ADIA officials stressed that progress had been made and that the UAE wanted to deepen its partnership with the U.S. In their view, they noted, the FTA served as a visible symbol of that partnership, but other tools could also be used to deepen the partnership. They explained that progress had been made

in resolving several issues, including security of assets and tax. Brown noted that the U.S. Treasury Department had worked closely with ADIA and USTR on clarifying tax treatment in a way that proved how successful an open minded approach to dealing with legitimate needs could be. ADIA would follow-up with Treasury with or without an FTA. Brown suggested that negotiating a Bilateral Investment Treaty based on the FTA investment chapter might be an option to capture some of the progress made, should both sides fail to reach agreement on an FTA.

Open U.S. Investment Climate

¶10. (C) A/S Bohigian explained that he wanted the UAE to know that, despite problems such as DP World, the U.S. welcomed foreign investment and understood its benefits in terms of job creation. He solicited thoughts from his interlocutors on what it would take to increase their investments in the U.S. Sheikha Lubna noted that the UAE had long invested in financial assets in the U.S. Recently, however, she noted, the UAE was investing in tangible, high profile, and sensitive real assets. DP World had been a shock to the UAE, she noted. Most ports in the U.S. were already managed by foreign companies. The opposition left the Emiratis feeling that foreign ownership was ok, Arab ownership was not. She noted that she thought the Committee on Foreign Investment in the U.S. served an important screening role and had made the right decision in the DP World case. Too much scrutiny, she asserted served as a barrier to investment.

¶11. (C) The UAE also had concerns about the security of its assets. The UAE had trade and investment relations with a number of different countries, some of which -- Iran for example -- the USG sanctioned. She noted that she had been in discussions with Dubai Holding before it purchased Doncasters (a British firm with defense industry assets in the U.S.) and that they had been "this close" to pulling out of the deal out of concern for the possible reaction.. For that reason, it was seeking some assurances in the FTA. "With respect to U.S. assurances," she noted, "we want to see it in black and white." Sheikha Lubna also stressed that the UAEG viewed its relationship with the U.S. as a strategic one that would withstand these difficulties. She noted that the UAEG had made the decision to view DP World's difficulties as commercial rather than political and had resisted calls to retaliate.

¶12. (C) ADIA officials explained that ADIA looked at the U.S. as an important part of the global financial system. Given the size and liquidity of the U.S. market, it made up an important part of ADIA's asset allocation strategy. (Note: ADIA is a portfolio investor and does not engage in Foreign Direct Investment. End Note) According to Salem Al-Mazroui, ADIA invested across the various asset classes and allocated its investments based on its evaluation of risk and return. It had increased its investments in the U.S. over the previous 2-3 years and found U.S. real estate funds, private equity and fixed income attractive (in addition to its traditional equity investments). He added that a few small incentives could increase ADIA's appetite for U.S. investments. (Note: These incentives likely deal with the clarification of ADIA's tax status that it has requested as part of the FTA negotiations. End Note.) Brown noted, by way of example that ADIA did not have an office in the U.S., the lack of which limited its willingness to participate in certain private equity or real estate transactions. The problem was not in getting access to the institutions. The concern was with getting current intelligence from nine time zones away. Peake noted that concerns about litigation were the biggest single potential bottleneck to ADIA expanding its U.S. portfolio dramatically. An alternative dispute mechanism that met the needs of both parties would be "an incredible breakthrough."

¶13. (SBU) Al-Mazroui noted that after September 11, 2001, there had been some capital flight from the U.S. with regard to both government and private sector investors in the region. In the last two years, however, he noted that the U.S. had been more willing to come to the region in order to discuss issues. In terms of private sector investors, he added that UAE private sector reserves would probably add \$300-\$500 billion in the UAE alone with around one trillion in the GC as a whole. The time would come, he predicted when China would not be as major an investor in the U.S. financial markets and then the U.S. would need to look back to petrodollars.

Export Controls - Where is the Law?

¶14. (C) A/S Bohigian and Ambassador stressed the need for the UAE to enact an export control and transshipment law by the end of 2006, since the continued lack of such a law could have a negative impact on U.S. - UAE trade. Sheikha Lubna agreed that the UAE needed to tighten any loopholes "if they exist," and urged the U.S. to engage in outreach to the various UAE Chambers of Commerce to explain U.S. export control laws. She noted that many UAE companies had difficulties understanding the USG sanctions on Iran. She also suggested that the UAE and the U.S. develop a bilateral commission to deal with the questions of exports, to which Ambassador replied that there was already a bilateral Counterproliferation Task Force. (Note: It was apparent that Sheikha Lubna was not completely aware of USG efforts to urge the UAE to adopt and enforce an export control law. End Note.)

Arab League Boycott - Commitment to Working with us

¶15. (C) A/S Bohigian raised the continuing problems with UAE implementation of the secondary and tertiary aspect of the Arab League Boycott of Israel. Sheikha Lubna initially noted that this would be an easier topic of discussion if the Israeli Government ceased its "aggression and genocide" in the Palestinian territories, noting that people in the UAE react "emotionally" on this issue at times. She explained that the UAEG had instructed a number of government agencies and parastatals to revise the language, and promised to work with the Embassy on resolving the problem. (Note: Commerce/BIS will be providing copies of the documents to the Embassy. We will be following up with the Ministry of Economy as soon as these arrive.)

UAE Opening up Economy

¶16. (SBU) A/S Bohigian asked Sheikha Lubna if she could provide an update on the UAE's plans to amend the Commercial Companies Law to permit greater foreign investment. She said that the legislation had gone through the government's technical committee and was moving on. The current plan she noted was to liberalize in the service sectors. U/S Al-Saleh explained that the plan was to focus the opening on sectors where the UAE wanted to attract foreign investment such as: professional services, information technology, health, and education. The intention was to open some sectors to 100% foreign ownership. The UAE was pursuing a step wise approach to liberalizing its economy. In addition, he noted the UAE had around 32 free zones which authorized 100% foreign ownership. Service companies also had the opportunity to establish branches in the UAE with 100% foreign ownership. Sheikha Lubna noted that her efforts to liberalize the economy also had to deal with concerns from UAE business. She explained that amending the Agency law had been "tough." Even though the UAE business constituency didn't vote, she noted it had direct connection to the rulers through the Majlis process.

¶17. (U) A/S Bohigian's party cleared this cable.

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